

Tuesday, November 21, 2006

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

Ms. Yee opened the Board meeting in honor of Martin Helmke, Chief Consultant to the Committee on Revenue and Taxation in the California State Senate and former employee of the State Board of Equalization.

On behalf of the Board Members, Mr. Chiang presented to Mr. Helmke, a Board resolution extending its sincere and grateful appreciation for his long and distinguished record of professional service to the people of the State of California, and extended best wishes for a rewarding and gratifying retirement. (Exhibit 11.8)

Exhibits to these minutes are incorporated by reference.

LEGAL APPEALS MATTERS, ADJUDICATORY

Orna Amzaleg, Asher Fadlon and Isack Fadlon, 171769 (AS)

1-1-97 to 12-31-99, \$329,497.80 Tax, \$32,949.84 Penalty

Considered by the Board: June 13, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Mr. Parrish moved to reduce the markup to 45.43 percent, which is a 10 percent reduction to allow for discounts on footwear and apparel of as high as 75 percent based on the sale flyers submitted by the petitioner, while the Department indicates that their discount allowance averages only 25 percent. This would result in a reduction of \$267,891 measure and \$22,101 tax adjustment. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

(Motion expunged.)

Upon motion of Ms. Yee, seconded by Ms. Mandel, and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion to redetermine the petition be expunged.

Mr. Parrish moved with respect to the disallowed claimed resales in the amount of \$2,618,000, the department's error percentage from 3rd Quarter 2001 should be applied pursuant to Field Audit Manual 0405.20 (d); i.e., apply the percent of error directly against claimed nontaxable sales, reducing the measure by \$1,957,878, resulting in \$161,525 tax adjustment. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Leonard, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Long Beach Acceptance Corporation (EA), 198737

7-1-99 to 12-31-02, \$2,139,564.04

Considered by the Board: September 27, 2006

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Ms. Yee and Mr. Leonard. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter for lack of quorum.

CHIEF COUNSEL MATTERS**RULEMAKING****Regulation 1566, *Automobile Dealers and Sales Representatives*, and Regulation 1655, *Returns, Defects and Replacements*, Section 100 Changes**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department made introductory remarks regarding the proposed changes due to the enactment of the Car Buyer's Bill of Rights Assembly Bill (AB) 68 (Ch. 128, Statutes of 2005), as amended by AB 2302 (Ch. 567, Statutes of 2006) and provide for the application of the Sales and Use Tax Law to contract cancellation option charges and restocking fees for returned vehicles (Exhibit 11.9).

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved section 100 changes to Sales and Use Tax Regulations 1566 and 1655 as recommended by staff.

Regulation 1620, *Interstate and Foreign Commerce*, Section 100 Change

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed changes due to the enactment of AB 2239 (Ch. 352, Statutes of 2006), and provide a safe harbor from the imposition of use tax when vehicles are brought into California for the exclusive purpose of warranty or repair service (Exhibit 11.10).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved section 100 changes to Sales and Use Tax Regulation 1620 as recommended by staff.

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Request to publish *Board of Equalization Rules for Tax Appeals*

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department made introductory remarks regarding The *Board of Equalization Rules for Tax Appeals*, which provides comprehensive guidance regarding the administrative and appellate review processes for all of the tax and fee programs administered by the Board (Exhibit 11.11).

Speakers: Lenny Goldberg, Executive Director, California Tax Reform Association
Joshua P. Golka, Government Relations Advocate, SEIU Local 1000
Bruce Langston, Tax Counsel, Franchise Tax Board
Marty Dakessian, Dakessian & Associates

Action: Mr. Leonard moved to adopt staff recommendation. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Yee abstaining.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, Ms. Yee abstaining, the Board authorized to publish the *Board of Equalization Rules for Tax Appeals*, except Chapter 3.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 11.12).

Robert N. Landes, Business Taxes Specialist I, Ventura District Office
Linda A. Mason, Tax Technician II, Bakersfield Branch Office
Harold J. Murray, Supervising Tax Auditor I, Culver City District Office
Mary E. Wargo, Tax Technician III, Ventura District Office
Sheila Wisdom, Business Taxes Representative, Out-of-State District Office

Action: Approve the Board Meeting Minutes of June 27, July 18, August 16, August 29, September 12-13, and, September 27, 2006.

Action: Approve the Report on Effects of Proposition 10 on Cigarette and Tobacco Products Consumption (Exhibit 11.13).

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Action: Approve Assessors' Handbook Section 531, *Residential Building Costs* (Exhibit 11.14).

Action: Approve Assessors' Handbook Section 534, *Rural Building Costs* (Exhibit 11.15).

Action: Approve Assessors' Handbook Section 581, *Equipment Index and Percent Good Factors* (Exhibit 11.16).

Action: Approve the 2007 Timberland Production Zone Values (Exhibit 11.17).

BOARD COMMITTEE REPORTS

Legislative Committee

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Legislative Committee report (Exhibit 11.18).

Business Taxes Committee

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 11.19).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided an update regarding the Status Report on Feedback of Draft Strategic Plan (Exhibit 11.20).

Mr. Hirsig introduced Karen Johnson, Deputy Director of Administration, and Jeff McGuire, Manager, Tax Policy Division, Sales and Use Tax Department, who provided an update regarding the Discussion of Gov1 Contract for EFT.

Mr. Hirsig provided an update regarding the Status of KPMG Diagnostic Review Study and Discussion.

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Approval of the Proposed Realignment of the Property and Special Taxes Department

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the proposed realignment. (Exhibit 11.21)

PROPERTY TAXES HEARINGS

High Desert Power Trust 2000-A (1127), 359070

2006, \$470,600,000.00 Unitary Value

For Petitioner: Dannie A. Tobias, Representative

For Property and Special Taxes Department: Sam Chon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board-adopted unitary value should be based on the operating level of 760 Megawatts (MW) rather than the 830 MW rating of the petitioner's facility.

Whether the land should be valued assuming that its highest and best use is as a power plant.

Whether the Replacement Cost Less Depreciation (ReplCLD) value used by the Valuation Division recognizes the decrease in the value of plant components between the time of purchase and the January 1, 2006, valuation date.

Whether the Board-adopted value improperly includes non-assessable and nontaxable costs.

Whether the ReplCLD value used by the Valuation Division recognizes the obsolescence resulting from certain risk factors.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 11.22)

Action: Mr. Leonard moved to reduce the measure by the environmental credits. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Yee voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered the petition be submitted for decision.

Qwest Communications Corporation (2463), 359200

2006, \$144,500,000.00 Unitary Value, \$14,450,000.00 Penalty

For Petitioner: Peter W. Michaels, Attorney

For Property and Special Taxes Department: Mariam Baxley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the petitioner's 2006 Board-adopted unitary value accounted for all physical depreciation present in petitioner's unitary property.

Whether the Board properly applied the 10-percent penalty pursuant to Revenue and Taxation Code section 830 relating to petitioner's late-filed property statement.

Whether the Board should close the oral hearing to the public when discussing the petition's confidential or proprietary business information.

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Action: Mr. Leonard moved to relieve the penalty. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Yee voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the penalty be reduced by 2.5 percent.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:40 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 11:55 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Ms. Yee and Mr. Leonard present.

PROPERTY TAXES HEARINGS

Sprint PCS (2720), 359330

2006, \$20,000,000.00 Penalty

For Petitioner:

Michael S. Heaton, Taxpayer

Peter Hladek, Representative

For Property and Special Taxes Department: Dana Flanagan-McBeth, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Parrish. No other disqualifying contributions were disclosed.

Action: The Board granted the taxpayer's postponement request.

Cricket Communications, Inc. (2762), 358157

2002-2005, \$251,149.00 Penalty

Cricket Communications, Inc. (2762), 359136

2006, \$10,570,000.00 Penalty

For Petitioner:

Peter Hladek, Representative

Amy Haste, Representative

For Property and Special Taxes Department: Denise Riley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board should abate the 10-percent penalty imposed pursuant to Revenue and Taxation Code section 862 for the 2002-2005 escaped assessment for the failure of Cricket Communications, Inc. (petitioner) to timely report the acquisition of seven leased cell site parcels.

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Whether the Board properly imposed a 10-percent penalty on the unit value pursuant to section 830, subdivision (c)(1), for petitioner's failure to timely file a complete 2006 property statement.

Whether the Board should abate the 10-percent penalty imposed pursuant to section 830 for petitioner's failure to timely file a complete 2006 property statement.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish and Ms. Mandel absent, the Board ordered that the petitions be submitted for decision.

GWF Energy, LLC – Henrietta (1123), 359206

2006, \$73,800,000.00 Unitary Value

GWF Energy, LLC – Hanford (1122), 359207

2006, \$73,000,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department: Nancy Vadera, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Issues: Whether the Board's Replacement Cost New (ReplCN) factor used by the Valuation Division (respondent) adequately recognizes the decrease in the value of power plant components between the time of purchase and the 2006 lien date.

Whether the respondent's ReplCN factor properly includes costs for emission reduction credits (ERCs).

Whether the 2006 Board-adopted unitary value properly attributed soft costs to petitioners' land, and whether such costs were reasonable.

Whether the overall economic lives of petitioners' plants should be 30 years or 20 years.

Whether the respondent correctly assigned no weight to the comparable sales indicator when estimating petitioners' 2006 unitary value.

Whether the Capitalized Earning Ability (CEA) value indicator determined by the respondent was appropriate.

Whether assigning 80 percent weight to the ReplCLD value indicator and 20 percent weight to the CEA value indicator is appropriate.

Whether the Board should close the oral hearing to the public when discussing petitioners' confidential or proprietary business information.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish and Ms. Mandel absent, the Board ordered that the petitions be denied as recommended by staff.

Elk Hills Power, LLC (1126), 359139

2006, \$293,800,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department: Richard Moon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Mr. Chiang and Mr. Westly. No other disqualifying contributions were disclosed.

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Action: The Board deferred consideration of this matter for lack of quorum.

FINAL ACTION ON PROPERTY TAXES HEARINGS HELD NOVEMBER 21, 2006

High Desert Power Trust 2000-A (1127), 359070

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang and Ms. Yee voting yes, Mr. Leonard voting no, Mr. Parrish and Ms. Mandel absent, the Board ordered that the petition be denied as recommended by staff.

Cricket Communications, Inc. (2762), 358157

Cricket Communications, Inc. (2762), 359136

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish and Ms. Mandel absent, the Board ordered that the petitions be denied as recommended by staff.

PROPERTY TAXES HEARING

ConocoPhillips Pipe Line Company (0480), 359208

2006, \$65,500,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Sam Chon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Valuation Division (respondent) properly projected future cash flows based on petitioner's 2005 reported income to calculate petitioner's 2006 Capitalized Earning Ability (CEA) value indicator.

Whether respondent properly assigned 50 percent weight to the CEA value indicator and 50 percent weight to the Rate Base value indicator.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish and Ms. Mandel absent, the Board ordered that the unitary value be reduce to \$55,200,000.00 in accordance with staff's revised recommendation.

The Board adjourned at 2:05 p.m. in memory of Roy Richards, friend and Timber Tax Advisory Committee Member.

The foregoing minutes are adopted by the Board on March 20, 2007.

Note: The following case was removed from the calendar prior to the meeting: *Comcast Phone, LLC (7553), 359099.*